

**Darrel J. Hieber
Brett M. Oppenheim
SKADDEN. ARPS, SLATE,
MEAGHER & FLOM LLP
300 South Grand Avenue
Los Angeles, California 90071
(213) 687-5000**

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SUMMARY OF 2004 WORKERS' COMPENSATION REFORM LEGISLATION

**Darrel J. Hieber, Partner, and Brett M. Oppenheim, Associate,
Skadden, Arps, Slate, Meagher & Flom LLP Los Angeles, California**

INTRODUCTION

In 2003, the Legislature enacted major reforms to the California workers' compensation system in response to a crisis of increasing claims costs and premiums. The crisis developed from a confluence of factors during the ten years following repeal of the state's minimum rate law.¹

The 2003 reform legislation addressed three main areas of concern: (i) providing the California State Guaranty Association, the entity created to pay the claims of insolvent insurers, with the liquidity to continue paying such claims; (ii) reducing costs in the workers' compensation system, mostly through measures intended to help control medical costs and prevent over-utilization of medical services; and (iii) attempting to ensure that insurance companies pass through resulting cost savings on to employers.² In late 2003, Governor Gray Davis signed the reform legislation, hailing its cost saving measures and predicting a positive effect on job growth for California.³

There is a general consensus that the 2003 reforms will result in billions of dollars of cost reductions. However, the reforms generated much debate and uncertainty over the amount of actual cost savings that will be realized, and therefore, the extent to which premiums will be reduced.

The Insurance Commissioner, Democrat John Garamendi, applauded the legislation upon its enactment, but emphasized that "we still need to do more," and proposed his own additional reforms.⁴ Some Republican legislators characterized the

¹ These factors are summarized in "Developments in California Insurance Law: Workers' Compensation Reform," D. Hieber & R. LeMoine (2004), the report of the Insurance Law Committee of the Business Law Section of the State Bar of California, which is included in the "2003 Annual Review" of legal developments published by the Section, and which is available at the Insurance Law Committee's website: <http://www.calbar.ca.gov> (Insurance Law Committee of the Business Law Section).

² See *id.*, summarizing the 2003 legislative reform provisions.

³ G. Jones and M. Dickerson, *Davis Signs Work-Injury Measures*, Los Angeles Times, October 1, 2003, at C2.

⁴ *Id.*, see *California workers' comp rates to drop in 2004*, 4(Apr. 26, 2004) <http://sanjose.bizjournals.com/sanjose/stories/2003/12/01/daily26.html>

legislation as providing "merely cosmetic changes to a failing workers' compensation system."⁵ The newly elected Republican governor, Arnold Schwarzenegger in his "State of the State" address asserted that California "must fix the state's business climate, and we must start with [further] workers' compensation reform."⁶ Meanwhile, others in the Democrat-controlled Legislature urged legislation that would authorize greater regulation to prevent the charging of "excessive" workers' compensation insurance rates in light of the cost savings measures already enacted.⁷

Governor Schwarzenegger insisted on prompt enactment of further legislation this year to reduce the costs of the workers' compensation system, under the threat of otherwise supporting a measure on the November election ballot that would impose such reforms.⁸ In April, 2004, on the eve of the deadline for submitting signatures to qualify such a ballot measure, the Legislature passed with overwhelming bipartisan support, SB 899 (Poochigian-R), which the Governor signed into law.⁹

SB 899 is a complex measure, more than ninety pages in length. The legislation primarily focuses on further reducing costs in the workers' compensation system, mostly through additional measures to reduce medical costs, measures to control disability payments, as well as measures to reduce claims litigation and its associated costs. The following summarizes the legislation's more important provisions.

⁵ G. Jones and M. Dickerson, *Davis Signs Work-Injury Measures*, Los Angeles Times, October 1, 2003, at C2. (quoting state Senator Tom McClintock (R.-Thousand Oaks)).

⁶ *Workers' Compensation in California*, <http://www.igs.berkeley.edu/library/htWorkersCompensation.htm>

⁷ Democratic legislators proposed legislation to impose regulation on workers compensation insurance rates – e.g., ABX4 16 and SBX4 16.

⁸ *Workers' Compensation in California*, <http://www.igs.berkeley.edu/library/htWorkersCompensation.htm>

⁹ SB 899 passed the Assembly on a 77-3 vote, and passed the Senate on a 33-3 vote, see, *Workers Compensation Reform Becomes Law*, <http://www.news10net/storyfullasp>

MEDICAL TREATMENT FEES AND UTILIZATION

- Ties maximum reimbursement to medical providers for services rendered to injured workers to a medical fee schedule. (SEC. 24, amending Labor Code § 4603.2)
- Provides that the Medical Treatment Utilization Schedule to be adopted by Administrative Director (the American College of Occupational Medicine's Occupational Medicine Practice Guidelines, or a medical treatment utilization schedule adopted pursuant to Labor Code § 5307.27) creates a rebuttable presumption of correctness on the issue of the extent and scope of medical treatment of workers injuries regardless of date of injury. (SEC. 25, amending Labor Code § 4604.5)
 - Provides that employers shall provide medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Such treatment is in accordance with and defined by the guidelines. (SEC. 23, amending Labor Code § 4600)
 - Provides that the presumption may be controverted by a preponderance of scientific medical evidence. (SEC. 25, amending Labor Code § 4604.5)
- Extends the 24 visit limit applicable to chiropractic treatment (imposed by the 2003 reform legislation) to occupational therapy and physical therapy treatment. (SEC. 25, amending Labor Code § 4604.5)
- Provides that within one day of a claim being made the employer shall authorize medical treatment up to \$10,000. (SEC. 40, amending Labor Code § 5402)

MEDICAL PROVIDER NETWORKS

- Authorizes the insurer or employer to establish a Medical Provider Network to provide treatment to injured employees. (SEC. 27, adding Labor Code § 4616)
- Insurer or employer may require injured worker to seek treatment from a provider within the designated network (SEC. 27, adding Labor Code § 4616); if no network has been designated, the worker, after thirty days, may be treated by the provider of his or her choice (SEC. 23, amending Labor Code § 4600)
- The worker must seek treatment from the designated network unless the worker, in specified limited circumstances, has designated a primary treating physician prior to the accident or illness. (SEC. 23, amending Labor Code § 4600)
- Provides that after the first visit the injured worker has the right to choose a doctor within the medical network. (SEC. 27, adding Labor Code § 4616.3)

- Authorizes out-of-network specialist treatment if approved by the employer or the insurer. (SEC. 27, adding Labor Code § 4616.3)
- Provides that treatment shall be in accordance with the American College of Occupational Medicine's Occupational Medicine Practice Guidelines, or pursuant to the medical treatment utilization schedule pursuant to Labor Code § 5307.27. (SEC. 27, adding Labor Code § 4616)

DISPUTE RESOLUTION

- Provides that employees' right to recover penalties for violations of the Labor Code no longer applies to workers compensation provisions of the Code. (SEC. 5.5, amending Labor Code § 2699)
- Provides that regulations regarding procedures governing the determination of any disputed medical issues are to be adopted by the Administrative Director and must be consistent with the above medical treatment utilization schedule. (SEC. 23, amending Labor Code § 4600)
- Repeals the rule requiring liberal construction of the Labor Code to favor extending benefits to employees; provides that all parties and lien claimants must meet the preponderance of evidence burden of proof, and that all parties are to be treated equally before the law. (SEC. 9, amending Labor Code § 3202.5)
- Repeals treating physician presumption of correctness for all purposes. (SEC. 22, repealing Labor Code § 4062.9)
- Limits penalties on employers for unreasonable delay of claims payments. (SEC. 42, amending Labor Code § 5814)
- Where employer designated network exists, authorizes the injured worker to obtain a second and third medical opinion in appropriate specialty within the network if he/she disputes diagnosis or treatment prescribed by the treating physician. (SEC. 43, adding Labor Code § 4616.3)
- If treatment remains in dispute, authorizes independent medical review. (SEC. 27, adding Labor Code § 4616.4)
 - Administrative Director to adopt the report of the independent reviewer and issue a decision to the parties. (SEC. 27, adding Labor Code § 4616.4)
 - No additional reports or exams shall be ordered or admitted to the Workers Compensation Appeals Board on issues of medical treatment under networks. (SEC. 27, adding Labor Code § 4616.6)

TEMPORARY DISABILITY

- Provides that the Return-to-Work Program is to be fully funded by employer surcharges. (SEC. 3, amending Labor Code § 139.48)
- Eliminates the payment of wage reimbursement and premium reimbursement under the Return-to-Work Program, and replaces them with lump sum payments. (SEC. 3, amending Labor Code § 139.48)
- Re-enacts provision of vocational rehabilitation services (repealed under the 2003 reform legislation) for employees injured prior to January 2004. (SEC. 4 and 5, repealing then adding Labor Code § 139.5)
- Prohibits aggregate disability payments for a single injury causing temporary disability from extending for more than 104 compensable weeks within two years, except for certain specified injuries and conditions. (SEC. 29, amending Labor Code § 4656)
- Provides financial incentives for employers to put injured worker back to work at his or her prior position, through accommodations, or at an alternative position. (SEC. 3, amending Labor Code § 139.48)

PERMANENT DISABILITY

- Authorizes the Administrative Director to adopt a schedule for determination of percentage of permanent disabilities. (SEC. 32, amending Labor Code § 4660)
- Provides that diminished earnings capacity for permanent disability shall be determined by a numeric formula based on American Medical Association criteria. (SEC. 32, amending Labor Code § 4660)
- Requires continuation of payment of permanent disability based on a reasonable estimate at the end of a temporary disability, regardless of whether the extent of the permanent disability can be determined at that date. (Sec. 28, amending Labor Code § 4650)
- Provides that the employer shall only be liable for the percentage of permanent disability caused by the injury arising out of and occurring in the course of employment. (SEC. 33 and 34, repealing and adding Labor Code § 4663)
- Requires employee to disclose upon request all previous permanent disabilities or physical impairments, and imposes limits on percentage of permanent disability employee may recover. (SEC. 35, adding Labor Code § 4664)
- Requires physician preparing a permanent disability report to address the issue of causation due to the subject injury. (SEC. 33 and 34, repealing and adding Labor Code § 4663)